IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 9TH JANUARY 2007 / 19TH PAUSHA 1928

OP.No. 10705 of 1998(Y)

PETITIONERS:

*** N.KIRISHNA IYER, 24/ 510, PALACE ROAD, CHALAKUDY (DECEASED)**

ADDL.PETITIONERS IMPLEADED

2. K.NARAYANAN, A1/259, KAUDINYA , PALACE ROAD, CHALAKUDY.

3. K.VENKTESWARAN, 680/307, PALACE ROAD, CHALAKUDY.

4. K.VASANTHA, 680/307, PALACE ROAD, CHALAKUDY.

ADDL.PETITIONERS IMPLEADED VIDE ORDER DT.18.6.01 IN CMP.NO.24804/2001.

BY ADV. SRI.N.GOVINDAN NAIR
SRI.K.UNNIKRISHNAN
SRI.THOMAS JOSEPH
SMT.J.AJITHA
SRI.N.SANKARA MENON KALOOR
SRI.N.GOVINDAN NAIR

RESPONDENTS:
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1. STATE OF KERALA , REP.BY THE CHIEF SECRETARY TO THE GOVERNMENT, SECRETARIATE, THIRUVANANTHAPURAM.

2. ACCOUNTANT GENERAL, KERALA, THIRUVANANTHAPURAM.

BY ADDL.ADVOCATE GENERAL
GOVERNMENT PLEADER SRI.NOBLE MATHEW

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 09/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.18318/1998 IN OP. NO.10705/1998

DISMISSED

9.1.2007 **SD/- S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE JUDGMENT IN OP. 9085/91 .

EXT.P2:- COPY OF THE JUDGMENT IN WA. 1416/96.

EXT.P3:- COPY OF THE LETTER NO.55660/ PEN B2/96/FIN OF GOVERNMENT.

EXT.P4:- COPY OF THE ORDER 2ND RESPONDENT NO.PA5/COMT/30/C/2059.

EXT.P5:- COPY OF THE LETTER NO.PR7/RV/475/MM/97-98/894.

/TRUE COPY/

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S. SIRI JAGAN, J.

O.P. No. 10705 OF 1998 Y

Dated this the 9th day of January, 2007

J U D G M E N T

The original petitioner in the original petition retired as Assistant Registrar of the High Court of Kerala on 22.2.1966. The Government issued GO(P) No.572/80/Fin dated 6.9.1980 liberalising the pension of retired government servants. He claimed benefit of the said Government Order. Since the Government Order was to be effective with effect from 31.3.1979, the petitioner's claim was rejected on the ground that the benefit of the above Government Order would not be available to those persons, who retired prior to 31.3.1979. Since the petitioner retired on 22.9.1966, he was not entitled to the benefits of the Government Order, was the stand taken by the respondent on his claim. The petitioner challenged the said stand of the respondent by filing OP No.9085/91 in which a learned Single Judge of this court by Ext.P1 judgment directed the 1st respondent to re-fix the pension of the petitioner as on the date of retirement taking Rs.320/- as basic pension within three months from the date of receipt of a copy of that judgment with all consequential benefits of such re-fixation. The State took up the matter in W.A. No.1416/1996. While upholding the judgment of the learned Single Judge, the Division Bench held as follows:

> " For the above reasons, the impugned judgment dated 5.3.1996 passed by the learned single judge is upheld subject to the modification that the respondent will be entitled to take advantage of the liberalisation of pension formula only prospectively."

2. Subsequently, in accordance with the said judgment, the respondent re-fixed the pension of the petitioner by Exts.P3, P4 and P5. However, in those orders it was stated that the benefit of the revision would be payable to the petitioner only with effect from 3.12.1997 namely, the date of the Division Bench decision, Ext.P2. The stand of the respondent was challenged by the petitioner in this original petition. The petitioner submitted that when the Division Bench held that the petitioner would be entitled to take advantage of the liberalisation of pension formula only prospectively the Division Bench only meant that it would be prospective from the date of effect of the Government Order and not prospective with effect from the date of the judgment.

3. On the other hand, the learned Government Pleader stoutly contends that what the judgment meant was prospectively from the date of the judgment. He also submits that since it is a Division Bench decision and if the petitioner had a case that there was violation of that decision the petitioner's remedy lies in filing a contempt of court case and not another original petition.

4. During the pendency of the original petition, the original petitioner died and additional petitioners 2 to 4 came on record as legal

heirs to prosecute the original petition.

5. After hearing both sides, I do not agree with both the contentions of the respondents. I have absolutely no doubt in my mind that what the Division Bench meant was that the petitioner would be entitled to the liberalised pension formula with effect from the date of effect of the Government Order namely, 31.3.1979 and not from the date of the Division Bench judgment. Any other interpretation would militate against the very spirit of the judgment itself reading the judgment as a whole. I also do not find any substance in the other contention that the remedy available to the petitioner was to file a contempt case. In a contempt case, the petitioner could only bring to the attention of this court violation of a judgment so as to punish the contemnor in which, it is settled law that the petitioner cannot obtain any positive relief. Result of my above findings is that the petitioners are entitled to succeed in this original petition. Accordingly, the original petition is allowed and the respondents are directed to re-fix the pensionary benefits of the petitioner with effect from 31.3.1979 with monetary benefits also with effect from that date. Arrears payable to the 1st petitioner on such computation shall be paid to petitioners 2 to 4 within two months from the date of receipt of a copy of this judgment.

(S. SIRI JAGAN, JUDGE)

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S. SIRI JAGAN , J.

OP No.10705/98 Y

J U D G M E N T

9th January, 2007